Case C-228/05

Stradasfalti Srl

v

Agenzia delle Entrate – Ufficio di Trento

(Reference for a preliminary ruling from the Commissione tributaria di primo grado di Trento)

(Sixth VAT Directive – Articles 17(7) and 29 – Right to deduct input VAT)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax*

(Council Directive 77/388, Art. 17(7), first sentence)

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax*

(Council Directive 77/388, Art. 17(7), first sentence)

3. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax*

(Council Directive 77/388, Art. 17(1)(2) and (7))

1. The first sentence of Article 17(7) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes requires the Member States, in order to respect the procedural obligation of consultation laid down by Article 29 of that directive, to inform the Advisory Committee on value added tax established by that article that they intend to adopt a national measure derogating from the general system of deducting value added tax and to provide that committee with sufficient information to enable it to examine the measure in full knowledge of the facts.

The obligation to consult the Advisory Committee would be deprived of its meaning if the Member States merely notified it of the national derogating measure which they envisaged adopting without including any explanation as to the nature and scope of the measure. The Advisory Committee must be in a position to deliberate properly on the measure submitted to it.

(see paras 30, 32, operative part 1)

2. The first sentence of Article 17(7) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as not authorising a Member State to exclude goods from the system of deducting value added tax without first consulting the Advisory Committee on value added tax established by Article 29 of that directive. Nor does that provision authorise a Member State to adopt measures excluding goods from the system of deducting that tax which contain no indication as to their limitation in time and/or which form part of a body of structural adjustment measures whose aim is to reduce the budget deficit and allow

State debt to be repaid. It authorises a Member State to adopt measures of a temporary nature which are intended to deal with the consequences of the situation of its economy at a given time.

(see paras 53-55, operative part 2)

3. In so far as an exception from the system of deductions has not been established in accordance with Article 17(7) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, the national tax authorities may not rely as against a taxable person on a provision derogating from the principle of the right to deduct value added tax set out in Article 17(1) of that directive. A taxable person which has been subject to that derogating provision must be able to recalculate its value added tax debt in accordance with Article 17(2) of the directive, in so far as the goods and services have been used for the purposes of taxable transactions.

(see paras 69, operative part 3)

JUDGMENT OF THE COURT (Third Chamber)

14 September 2006 (*)

(Sixth VAT Directive – Articles 17(7) and 29 – Right to deduct input VAT)

In Case C-228/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Commissione tributaria di primo grado di Trento (Italy), made by decision of 21 March 2005, received at the Court on 24 May 2005, in the proceedings

Stradasfalti Srl

v

Agenzia delle Entrate – Ufficio di Trento,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Malenovský, J.?P. Puissochet (Rapporteur), A. Borg Barthet and U. Lõhmus, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 April 2006,

after considering the observations submitted on behalf of:

– Stradasfalti Srl, by B. Santacroce, avvocato,

– the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. De Bellis, avvocato dello Stato,

– the Commission of the European Communities, by A. Aresu and M. Afonso, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 June 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 17(7) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, 'the Sixth Directive').

2 This reference was made in proceedings between the limited company Stadasfalti Srl ('Stradasfalti') and the Agenzia delle Entrate – Ufficio di Trento (Revenue Agency – Trento Office) concerning reimbursement of the value added tax (VAT) which Stradasfali paid in the years 2000 to 2004 on the purchase, use and maintenance of tourist vehicles which were not intrinsic to its business activity as such.

Legal context

Community legislation

3 Article 17 of the Sixth Directive, entitled 'Origin and scope of the right to deduct' provides in paragraph 2(a) that '[i]n so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay … value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person'.

4 Article 17(6) of the Sixth Directive provides:

'Before a period of four years at the latest has elapsed from the date of entry into force of this directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of value added tax. Value added tax shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this directive comes into force.'

5 Article 17(7) of the Sixth Directive provides:

'Subject to the consultation provided for in Article 29, each Member State may, for cyclical economic reasons, totally or partly exclude all or some capital goods or other goods from the system of deductions. To maintain identical conditions of competition, Member States may, instead of refusing deduction, tax the goods manufactured by the taxable person himself or which he has purchased in the country or imported, in such a way that the tax does not exceed the value

added tax which would have been charged on the acquisition of similar goods.'

6 Article 29(1) and (2) of the Sixth Directive provides:

'1. An Advisory Committee on value added tax ["the VAT Committee"], hereinafter called "the Committee", is hereby set up.

2. The Committee shall consist of representatives of the Member States and of the Commission.

The chairman of the Committee shall be a representative of the Commission.

Secretarial services for the Committee shall be provided by the Commission.'

National legislation

7 The relevant national legislation is contained in Article 19a(1), entitled 'Exclusion or reduction of the deduction in respect of certain goods and services' of Decree No 633 of the President of the Republic of 26 October 1972 (ordinary supplement to the GURI No 292, of 11 November 1972), as amended by Article 3 of Legislative Decree No 313 of 2 September 1997 (ordinary supplement to the GURI No 219, of 27 December 1997).

8 The said Article 19a(1) provides:

'Notwithstanding Article 19:

…

(c) tax on the purchase or importation of mopeds, motorcycles, passenger cars and motor vehicles referred to in Article 54(a) and (c) of Legislative Decree No 285 of 30 April 1992, not included in Table B annexed hereto and not intended for public use, which are not intrinsic to the business activity as such, and the associated components and spare parts, as well as on the supply of services referred to in Article 16(3), and on services linked to the use, holding, maintenance and reparation of the said goods, may not be deducted other than by commercial agents or representatives;

(d) tax on the purchase or importation of fuel and lubricants for passenger cars and motor vehicles, aircraft, ships and pleasure boats may be deducted if the tax on the purchase, importation or acquisition under leasing arrangements, chartering and similar of the passenger cars, vehicles, aircraft and ships in question may be deducted.'

9 The effect of that provision was limited to 31 December 2000 by Article 7(3) of Law No 488 of 23 December 1999 (ordinary supplement to the GURI No 302, of 27 December 1999).

10 It was then extended and its field of application amended by Article 30(4) of Law No 388 of 23 December 2000 (ordinary supplement to the GURI No 302, of 29 December 2000), which stated:

'The non-deductibility of [VAT] on transactions relating to mopeds, motorcycles, passenger cars and motor vehicles referred to in Article 19a(l)(1)(c) of Decree No 633 of the President of the Republic of 26 October 1972, extended most recently until 31 December 2000 by Article 7(3) of Law No 488 of 23 December 1999, is again extended until 31 December 2001; however, as regards the purchase, importation and acquisition through leasing arrangements, chartering and similar of the said vehicles, the non?deductibility is reduced to 90% of the amount in question and

to 50% in the case of vehicles not powered by internal combustion.'

11 That text remained in force as a result of further annual extensions. The expiry date was thus amended by Article 9(4) of Law No° 448 of 28 December 2001, then by Article 2(13) of Law No 289 of 27 December 2002, by Article 2(17) of Law No 350 of 24 December 2003 and, finally, by Article 1(503) of Law No 311 of 30 December 2004 which extended it until 31 December 2005.

The main proceedings and the questions referred for a preliminary ruling

12 Stradasfalti is a limited company governed by Italian law, whose registered office is in the province of Trente and which carries out road works.

13 It owns company cars which are not intrinsic to its activity as such, with the result that the purchase, use, maintenance and supply of fuel of such vehicles have not given rise to a right to deduct VAT, pursuant to the Italian legislation.

14 Taking the view that that legislation was incompatible with the provisions of the Sixth Directive concerning the deductibility of VAT, Stradasfalti claimed, on 7 July 2004, repayment from the Revenue Agency – Trento Office of around EUR 31 340 by way of reimbursement of VAT paid from 2000 to 2004 for the purchase, use, maintenance and supply of fuel for its company cars.

15 That claim was rejected by several decisions adopted on 15 July 2004 by the Revenue Agency – Trento Office.

16 On 22 November 2004, Stradasfalti brought an action before the Commissione tributaria di primo grado di Trento (Tax Court of First Instance, Trento), seeking the annulment of those decisions and reimbursement of the VAT for the periods in question.

17 It is against that background that the Tax Court of First Instance, Trento decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the first sentence of Article 17(7) of [the] Sixth … Directive ... , in relation to paragraph 2 of that article, to be interpreted as:

(a) precluding from being treated as "consultation of the VAT Committee", for the purposes of Article 29 of that directive, the mere notification by a Member State of the adoption of a rule of national law, such as the present Article 19a(1)(c) and (d) of the Decree of the President of the Republic No 633/72 as subsequently extended, which restricts the right of VAT deduction in respect of the use and maintenance of the goods referred to in Article 17(2), on the basis that the VAT Committee has merely taken notice of the adoption of that rule?;

(b) also precluding from being treated as a measure falling within its scope any restriction whatsoever of the right to deduct VAT connected to the purchase, use and maintenance of the goods referred to in (a), introduced before the consultation of the VAT Committee and maintained in force by means of various legislative extensions adopted in unbroken succession for more than 25 years?;

(c) if the answer to Question 1(b) is in the affirmative, the Court is asked to provide guidelines for determining the maximum period, if any, for such extensions on grounds of cyclical economic reasons referred to in Article 17(7) of the Sixth Directive; or else to state whether the failure to observe the temporary nature of the derogations (repeated over time) confers on the taxpayer the right to deduct.

(2) If the requirements and conditions for the procedure under Article 17(7) have not been

complied with, is Article 17(2) of the Sixth Directive to be interpreted as precluding a rule of national law or an administrative practice adopted by a Member State after the entry into force of the Sixth Directive (1 January 1979 for Italy) which, objectively and without limitation in time, restricts VAT deduction in respect of the purchase, use and maintenance of certain motor vehicles?'

The questions referred

Question 1(a)

18 By question 1(a), the referring court asks whether the first sentence of Article 17(7) of the Sixth Directive must be interpreted as precluding from being treated as 'consultation of the VAT Committee', for the purposes of Article 29 of that directive, the notification by a Member State of the adoption of a rule of national law which limits the right to deduct VAT in respect of the use and maintenance of the goods referred to in Article 17(2), the VAT Committee limiting itself to taking note of such notification.

Observations submitted to the Court

19 The Commission submits that the consultation of the VAT Committee for the purposes of Article 29 of the Sixth Directive is an essential procedural condition for the application of the derogations concerning VAT deduction for cyclical economic reasons. The consultation of that committee must allow the representatives of the Member States and of the Commission to examine together the national measures derogating from the rule of deductibility of VAT. The mere notification of the VAT Committee of the national legislation, adopted or on the point of being adopted, cannot be considered to be sufficient consultation, any more than can the Committee's taking note of the national legislation notified to it.

20 That interpretation of Article 29 of the Sixth Directive is confirmed by the different linguistic versions of Article 17(7) of that directive. The Court has moreover already held, in Case C-409/99 *Metropol andStadler* [2002] ECR I-81, that consultation of the VAT Committee was a condition precedent to the adoption of any measure on the basis of Article 17(7).

21 Concerning the measure at issue in the main proceedings, the Italian Government consulted the VAT Committee in 1980 and specified, through its representative, the content and scope of the measure during the meeting of that institution held that year. It followed the same procedure at the time of the successive extensions of the measure, consulting that committee in 1990, 1995, 1996, 1999 and 2000.

22 The Commission recognises that the VAT Committee was consulted after the entry into force of the derogating measure, and queries whether Article 17(7) of the Sixth Directive requires consultation to take place before the entry into force. However, the procedure adopted in the present case by the Italian authorities seems to respect the prerogatives of the VAT Committee and to be consistent with the practice adopted by the other Member States. The Commission therefore relies on the wisdom of the Court to resolve that question.

23 The Italian Government submits that the procedure followed in the case in point did not infringe the obligation to consult the VAT Committee. That government made an express application to that committee, on the basis of which the Commission services were able to draw up a working document, before the dossier was submitted to the committee. What the judge described as 'merely taking note' is in fact the decision of the VAT Committee ending the consultation procedure referred to in Article 17(7) of the Sixth Directive.

24 In any case, and even if the procedure was not followed to the letter, the Italian Government submits that Article 17(7) of the Sixth Directive was not infringed.

25 Stradasfalti first points out that Article 19a(1)(c) and (d) of Decree No 633 of the President of the Republic of 26 October 1972, as amended, is incompatible with the Sixth Directive as the derogation from the right to deduct which it establishes does not fall within any of the categories of permitted derogations laid down by that directive. The measure at issue is contrary to Article 17(7) of the directive, as the VAT Committee was not consulted beforehand by the Italian Government, the cyclical economic reasons which alone could justify the derogation from the right to deduct VAT have never existed and the measure in question, far from being temporary, has been applied systematically for more than 25 years.

26 Concerning Question 1(a), Stradasfalti submits that the Community legislation requires actual consultation within the VAT Committee which alone allows monitoring of the use by the Member States of the possibility of derogation under Article 17(7) of the Sixth Directive. This provision therefore precludes a derogation from the right to deduct VAT from being introduced by the mere prior notification of a rule of national law of a Member State, or the mere prior notification of the Member State's intention to adopt such a provision, the VAT Committee limiting itself to taking note of that intention.

Findings of the Court

27 Article 17(7) of the Sixth Directive lays down one of the procedures for authorising derogations in that directive, giving Member States the right to exclude goods from the system of deductions '[s]ubject to the consultation provided for in Article 29'.

28 That consultation enables the Commission and the other Member States to control the use by a Member State of the possibility of derogating from the general system of deducting VAT, by checking in particular whether the national measure in question satisfies the condition of adoption for cyclical economic reasons.

29 Article 17(7) of the Sixth Directive thus lays down a procedural obligation which the Member States must observe in order to be able to make use of the derogation it sets out. Consultation of the VAT Committee is clearly a condition precedent to the adoption of any measure on the basis of that provision (see *Metropol and Stadler*, paragraphs 61 to 63).

30 The obligation to consult the VAT Committee would be deprived of its meaning if the Member States merely notified it of the national derogating measure which they envisaged adopting without including any explanation as to the nature and scope of the measure. The VAT Committee must be in a position to deliberate properly on the measure submitted to it. The procedural obligation referred to in Article 17(7) of the Sixth Directive therefore presupposes that the Member States will inform that committee that they envisage adopting a derogating measure and that they will provide it with sufficient information to enable it to examine the measure with full knowledge of the facts.

31 On the other hand, Article 17(7) of the Sixth Directive does not lay down any obligation as to the result of the consultation of the VAT Committee, and in particular does not require that committee to take a favourable or unfavourable decision on the national derogating measure. There is therefore nothing to prevent the VAT Committee from simply taking note of the national derogating measure communicated to it.

32 Therefore, the answer to Question 1(a) must be that the first sentence of Article 17(7) of the

Sixth Directive requires the Member States, in order to respect the procedural obligation of consultation laid down by Article 29 of that directive, to inform the VAT Committee that they intend to adopt a national measure derogating from the general system of deducting VAT and to provide that committee with sufficient information to enable it to examine the measure in full knowledge of the facts.

Question 1(b) and (c), first part

33 By its Question 1(b) and (c), first part, the referring court asks essentially whether the first sentence of Article 17(7) of the Sixth Directive must be interpreted as meaning that it authorises a Member State to exclude the goods referred to in Article 17(2) of that directive from the system of deducting VAT:

– without prior consultation of the VAT Committee, and

– without limitation in time.

Observations submitted to the Court

34 The Commission recalls that provisions laying down derogations from the principle of the right to deduct are to be interpreted strictly (see *Metropol and Stadler*, paragraph 59). The Court has already ruled that the application of the measures referred to in Article 17(7) of the Sixth Directive, which allows exceptions to the rule of deductibility to be introduced for 'cyclical economic reasons', must be limited in time, and that such measures cannot, by definition, be of a structural nature (see *Metropol and Stadler*, paragraph 69).

35 In that respect, the measure at issue in the main proceedings appeared in Italian legislation in 1979 as a permanent provision. It was only in 1980 that its application was limited in time, this limitation has however been successively extended since then. The measure appears in fact to have been adopted with the aim of preventing tax evasion and avoidance, objectives which fall within the procedure and special conditions referred to in Article 27 of the Sixth Directive.

36 The VAT Committee has indeed repeatedly pointed out to the Italian Government, since 1980, that the derogation in question could not be justified on the basis of Article 17(7) of the Sixth Directive. The more conciliatory attitude adopted by that committee during its meetings of 1999 and 2000 was a result of the Italian authorities' undertaking – which was not honoured – to re-examine the measure before 1 January 2001 and the possibilities presented at that time by the Commission's proposal to amend the Sixth Directive as regards the right to deduct VAT.

37 Under those circumstances, the Commission considers that the derogation at issue in the main proceedings is incompatible with Article 17(7) of the Sixth Directive.

38 The Italian Government submits that Question 1(b) is irrelevant and accordingly inadmissible.

39 In fact, the dispute in the main proceedings concerns only VAT paid in the years 2000 to 2004. The requests for consultation of the committee preceded the adoption of the national measure extending the derogation in 1999 and in 2000. Under those circumstances, the question submitted to the Court goes beyond the legislation applicable to the dispute in the main proceedings and is, therefore, inadmissible (see, most recently, Case C-165/03 *Längst* [2005] ECR I-5637). In any case, the Court has held that Article 27 of the Sixth Directive does not preclude the Council's decision authorising a Member State to adopt special measures derogating from the said directive from being introduced a posteriori (see Case C-17/01 *Sudholz* [2004] ECR I-

4243, paragraph 23). The same rule should apply to the consultation of the VAT Committee referred to in Article 17(7) of the same directive.

40 Question 1(c), first part, is purely hypothetical and accordingly also inadmissible.

41 Stradasfalti takes the view that the reply to Question 1(b) is that Article 17(7) of the Sixth Directive precludes a derogation from the right to deduct VAT from being introduced before consultation of the VAT Committee, as the Community legislation expressly requires prior consultation of that committee.

42 In the same way, Article 17(7) of that directive requires the derogation to be of a temporary nature, as it must, as the Court has ruled, be adopted for cyclical economic reasons. That article therefore precludes the continuation of the derogation in question for more than 25 years by means of successive extensions.

43 Concerning Question 1(c), Stradasfalti submits that the Court has already held, in *Metropol and Stadler*, that Article 17(7) only authorises a Member State to depart from the Community system of deduction of VAT for a 'determined period'. Advocate General Geelhoed, in his Opinion in that case, defined cyclical economic policy as that seeking to influence, over 'short periods of time', no more than 'one or two years in length', the macroeconomic quantities of a country. A derogation which continues for more than 25 years clearly infringes Article 17(7) of the Sixth Directive.

Findings of the Court

– The admissibility of the questions

44 The procedure provided for by Article 234 EC is an instrument of cooperation between the Court of Justice and national courts, by means of which the Court provides the national courts with the points of interpretation of Community law which they need in order to decide the disputes before them (see, in particular, Case C-380/01*Schneider* [2004] ECR I-1389, paragraph 20).

45 In the context of that cooperation, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is, in principle, bound to give a ruling (*Schneider*, paragraph 21).

46 Nevertheless, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (*Schneider*, paragraph 22).

47 The spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (*Schneider*, paragraph 23).

48 In the present case, it is apparent from the observations submitted to the Court that although

the dispute in the main proceedings concerns only VAT paid in the years 2000 to 2004, years in respect of which the requests for consultation of the VAT Committee, according to the Italian Government, preceded the adoption of the national measure extending the derogation, the latter in fact entered into force before that period and was systematically renewed for several years. It therefore does not appear that the interpretation of Community law sought bears no relation to the facts of the main proceedings or raises a hypothetical problem.

49 Consequently, it must be held that Question 1(b) and (c), first part, is admissible.

– Substance

50 Concerning Question 1(b), which is intended to establish whether Article 17(7) of the Sixth Directive authorises a Member State to exclude goods from the system of deducting VAT without first consulting the VAT Committee, the Court has already held, as stated at paragraph 29 above, that consultation of that committee is a condition precedent to the adoption of any measure on the basis of that provision (see *Metropol and Stadler*, paragraphs 61 to 63).

51 Contrary to the submissions of the Italian Government, the reply to that question cannot be inferred from the approach adopted by the Court in *Sudholz*. By that judgment, the Court held inter alia that Article 27 of the Sixth Directive does not require the Council to authorise special measures for derogation adopted by the Member States before the enactment of those measures. However, the consultation procedure laid down by Article 17(7) of the Sixth Directive, which is at issue in the present case, does not have the same objective as the authorisation procedure laid down by Article 27 of that directive. The Italian Government consequently has no grounds for arguing that it follows from *Sudholz* that the solution already adopted by the Court in *Metropol and Stadler* does not apply in the present case.

52 As regards Question 1(c), first part, which is intended to establish whether Article 17(7) of the Sixth Directive authorises a Member State to exclude goods from the system of VAT deduction without limitation in time, it should be recalled that that article authorises the Member States to exclude goods from the system of deductions ‘for cyclical economic reasons’.

53 That provision therefore authorises a Member State to adopt measures of a temporary nature which are intended to deal with the consequences of the situation of its economy at a given time. Therefore, the application of measures referred to in that provision must be limited in time and cannot, by definition, be of a structural nature.

54 It follows that the first sentence of Article 17(7) of the Sixth Directive does not authorise a Member State to adopt measures excluding goods from the system of deducting VAT which contain no indication as to their limitation in time and/or which form part of a body of structural adjustment measures whose aim is to reduce the budget deficit and allow State debt to be repaid (see *Metropol and Stadler*, paragraph 68).

55 The answer to Question 1(b) and (c), first part, must therefore be that the first sentence of Article 17(7) of the Sixth Directive must be interpreted as not authorising a Member State to exclude goods from the system of deducting VAT without first consulting the VAT Committee. Nor does that provision authorise a Member State to adopt measures excluding goods from the system of deducting that tax which contain no indication as to their limitation in time and/or which form part of a body of structural adjustment measures whose aim is to reduce the budget deficit and allow State debt to be repaid.

Question 1(c), second part, and Question 2

56 By those questions, the referring court essentially asks whether the national tax authorities may rely as against a taxable person on a provision derogating from the principle of the right to deduct VAT which was not established in accordance with Article 17(7) of the Sixth Directive.

Observations submitted to the Court

57 The Commission submits that, according to settled case-law of the Court of Justice (see in particular Case C-62/93 *BP Supergas*[1995] ECR I?1883, paragraphs 16 to 18), the right to deduct is an integral part of the VAT scheme and confers in principle on the taxpayer a right which can only be subject to limitations established by the directive itself.

58 When a national derogation from the principle of deductibility of VAT has been introduced by a Member State in breach of the Sixth Directive, the taxpayer is entitled to deduct the VAT paid on the goods in question covered by the national measure. The Court has, for example, ruled, in paragraph 64 of *Metropol and Stadler*, that in so far as an exclusion from the system of deductions has not been established in accordance with Article 17(7) of the Sixth Directive, which imposes a duty of consultation on the Member States, the national tax authorities may not rely as against a taxable person on a provision derogating from the principle of the right to deduct VAT set out in Article 17(1) of that directive.

59 The Italian Government submits that, for the period 2000 to 2004, the compliance with the procedure laid down by Article 17(7) of the Sixth Directive, the favourable opinion given by the Commission concerning the requests for derogations, and the situation of the Italian economy at the relevant time, make it difficult not to apply the national legislation, and, therefore, to recognise the taxpayers' right of deduction.

60 In the view of that government, Question 2 is doubly inadmissible. First, it refers to periods prior to the year 2000, which are not at issue in the main proceedings.

61 Second, that question bears no relation to the situation in Italy between 2000 and 2004 in that it mentions a limitation of the deduction which is '[objective] and without limitation in time'. A first derogation was in fact granted until 31 December 2000 after consultation of the VAT Committee and the favourable opinion of the Commission. The second derogation for that period was requested with effect from 1 January 2001 and preceded by a favourable opinion from the Commission, which took the view that the measure could be justified until the adoption of the new directive.

62 In any case, the Italian Government submits that the fact that the VAT Committee takes note of a national derogating measure after the adoption of that measure does not justify considering it as illegal, as the Court held, concerning Article 27 of the Sixth Directive, in paragraph 23 of *Sudholz*.

63 Stradasfalti submits that Article 17(2) of the Sixth Directive precludes, in the case of infringement of Article 17(7) of that directive, a national provision hindering the total and immediate exercise by taxpayers of their right to deduct as regards tax paid on the purchase, use and maintenance of motor vehicles 'for tourism'.

Findings of the Court

– The admissibility of the question

64 As stated in paragraph 46 of this judgment, refusal to give a preliminary ruling on a question submitted by a national court is only possible where it is quite obvious that the interpretation of

Community law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (*Schneider*, paragraph 22).

65 In the present case, it is apparent from the observations submitted to the Court that although the dispute in the main proceedings only concerns VAT paid in the years 2000 to 2004, years in respect of which the requests for consultation of the VAT Committee, according to the Italian Government, preceded the adoption of the national measure extending the derogation, the latter entered into force before that period and was systematically renewed for several years. It therefore does not appear that the interpretation of Community law sought bears no relation to the facts of the main proceedings.

– Substance

66 By virtue of the general duty stated in the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), Member States are bound to observe all the provisions of the Sixth Directive (see Case C-97/90*Lennartz* [1991] ECR I-3795, paragraph 33). In so far as an exception from the system of deductions has not been established in accordance with Article 17(7) of the Sixth Directive, the national tax authorities may not rely as against a taxable person on a provision derogating from the principle of the right to deduct VAT set out in Article 17(1) of that directive (see *Metropol andStadler*, paragraph 64).

67 In the main proceedings, and even though the Italian Government submits that the requests for consultation of the VAT Committee, in 1999 and 2000, preceded the adoption of the national measure extending the derogation from the principle of the right to deduct VAT, it is common ground that that provision, with minor amendments, was systematically renewed from 1980 by the Italian Government. Under those circumstances it cannot be said to be of a temporary nature, nor can it be considered to be based on cyclical economic reasons. That measure must, consequently, be regarded as forming part of a body of structural adjustment measures, which do not come within the scope of application of Article 17(7) of the Sixth Directive. Therefore the Italian Government may not rely on such measures to the detriment of taxable persons (see to that effect *Metropol andStadler*, paragraph 65).

68 A taxable person which has been subject to that measure must be able to recalculate its VAT debt in accordance with Article 17(2) of the Sixth Directive, in so far as the goods and services have been used for the purposes of taxable transactions.

69 The answer to Question 1(c), second part, and Question 2 must therefore be that in so far as an exception from the system of deductions has not been established in accordance with Article 17(7) of the Sixth Directive, the national tax authorities may not rely as against a taxable person on a provision derogating from the principle of the right to deduct VAT set out in Article 17(1) of that directive. A taxable person which has been subject to that derogating provision must be able to recalculate its VAT debt in accordance with Article 17(2) of the Sixth Directive, in so far as the goods and services have been used for the purposes of taxable transactions.

On the application to limit the temporal effects of the judgment

70 The Italian Government has raised the possibility that the Court, if it takes the view that the derogations from the right to deduct in respect of the years 2000 to 2004 were not established in accordance with Article 17(7) of the Sixth Directive, might limit the temporal effects of the present judgment.

71 In support of that request, the Italian Government refers to the serious consequences for public finances which could be caused by the Court's judgment and the legitimate expectation which it was entitled to entertain as to the compatibility with Community law of the measure in question. It observes in that respect that the Commission, in 1999 and 2000, gave a favourable opinion concerning the measures intended to be taken while waiting for the adoption of the directive which would regulate the matter in a homogeneous manner, and that the Commission has never made a complaint to the Italian Republic concerning the continuation of the derogation.

72 It should be noted that it is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict for any person concerned the opportunity of relying upon a provision which it has interpreted with a view to calling in question legal relationships established in good faith. In determining whether or not to limit the temporal effect of a judgment it is necessary to bear in mind that although the practical consequences of any judicial decision must be weighed carefully, the Court cannot go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from a judicial decision (Case 24/86 *Blaizot* [1988] ECR 379, paragraphs 28 and 30, and Case C-163/90 *Legros and Others* [1992] ECR I-4625, paragraph 30).

73 In the present case, although the Commission has supported the Italian authorities in respect of the years at issue in the main proceedings, it is nevertheless clear from the observations submitted to the Court that the VAT Committee has repeatedly pointed out to the Italian Government, since 1980, that the derogation in question could not be justified on the basis of Article 17(7) of the Sixth Directive, and that the more conciliatory attitude adopted by that committee during its meetings of 1999 and 2000 was a result of the Italian authorities' undertaking to re?examine the measure before 1 January 2001 and the possibilities presented at that time by the Commission's proposal to amend the Sixth Directive as regards the right to VAT deduction.

74 Under those circumstances, the Italian authorities could not be unaware that the systematic renewal, since 1979, of a derogating measure which was supposed to be temporary and which could only be justified, under the very wording of Article 17(7) of the Sixth Directive, by 'cyclical economic reasons', was not compatible with that article.

75 The Italian authorities cannot therefore invoke the existence of legal relationships established in good faith in order to ask the Court to limit the temporal effects of its judgment.

76 Moreover, the Italian Government has not been able to demonstrate the soundness of the calculation which led it to argue before the Court that the present judgment might, if its temporal effects were not limited, entail significant financial consequences.

77 There is therefore no need to limit the temporal effects of the present judgment.

Costs

78 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **The first sentence of Article 17(7) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment requires the Member States, in order to respect the procedural obligation of consultation laid down by Article 29**

of that directive, to inform the Advisory Committee on value added tax established by that article that they intend to adopt a national measure derogating from the general system of deducting value added tax and to provide that committee with sufficient information to enable it to examine the measure in full knowledge of the facts.

2. **The first sentence of Article 17(7) of Sixth Directive 77/388 must be interpreted as not authorising a Member State to exclude goods from the system of deducting value added tax without first consulting the Advisory Committee on value added tax established by Article 29 of that directive. Nor does that provision authorise a Member State to adopt measures excluding goods from the system of deducting that tax which contain no indication as to their limitation in time and/or which form part of a body of structural adjustment measures whose aim is to reduce the budget deficit and allow State debt to be repaid.**

3. **In so far as an exception from the system of deductions has not been established in accordance with Article 17(7) of the Sixth Directive, the national tax authorities may not rely as against a taxable person on a provision derogating from the principle of the right to deduct value added tax set out in Article 17(1) of that directive. A taxable person which has been subject to that derogating provision must be able to recalculate its value added tax debt in accordance with Article 17(2) of the Sixth Directive 77/388, in so far as the goods and services have been used for the purposes of taxable transactions.**

[Signatures]

* Language of the case: Italian.